



August 18, 2000

Ms. Linda Cloud
Executive Director
Texas Lottery Commission
P O Box 16630
Austin, Texas 78761-6630

OR2000-3151

Dear Ms. Cloud:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 138181.

The Texas Lottery Commission (the "commission") received a request for "any and all new information" concerning GameTech International, Inc. You have submitted for our review an investigative report with supporting documentation prepared by the commission's Security Division and contained in four volumes. You have marked certain documents in volumes 1 and 3 for which you seek our decision, specifically exhibits "D," "E," "F," "G," "H," "I," "K," "L," "M," and "O." You claim that the marked information in these exhibits is excepted from disclosure under sections 552.103, 552.107, 552.108, and 552.111 of the Government Code.¹ We have considered the exceptions you claim and reviewed the submitted information.

Section 552.108 of the Government Code provides in part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

¹ In your initial correspondence to this office dated June 19, 2000, you requested our decision as to all of the information contained in the four submitted volumes. However, in subsequent correspondence you have narrowed the scope of information for which you seek our decision to the specific exhibits stated above. You explain that the information other than that marked in the above-stated exhibits has either been released to the requestor, or the commission has learned that the information is not responsive to the request due to clarifications the commission obtained from the requestor. Thus, this decision addresses only the specific exhibits stated above.

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation;

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

...

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Gov't Code § 552.108. Generally, a governmental body claiming an exception under section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement.² See Gov't Code §§ 552.108(a)(1), (b)(1), .301(b)(1); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You indicate that the requested information pertains to a completed investigation prompted by allegations of illegal conduct, and that the investigation file has been forwarded to an Assistant Attorney General in the Antitrust Division of this office for a determination of whether further investigation is needed, or legal action should be taken. Based on this representation, we understand that the matter is pending. We therefore find that you have shown that the public release of the information you have marked in the above-referenced exhibits, at this time, would interfere with the detection,

² We believe that the commission is a law enforcement agency for purposes of section 552.108 of the Government Code. See Gov't Code § 466.020 (commission is authorized to maintain department of security staffed by commissioned peace officers or investigators); *id.* § 466.019 (commission is authorized to enforce violations of lottery laws).

investigation or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), writ *ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases); Open Records Decision No. 216 (1978). Thus, we conclude that the information at issue may be withheld under section 552.108(a)(1). Because we make a determination under section 552.108, we do not address your additional arguments against disclosure.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

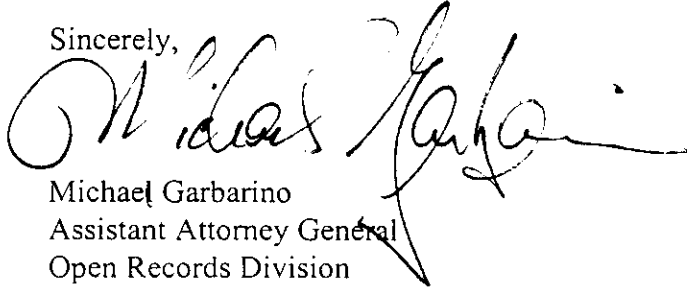
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a large loop at the end.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/pr

Ref: ID# 138181

Encl. Submitted documents

cc: Mr. Stephen Fenoglio
3660 Stone Ridge Road
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Austin, Texas 78746-7759
(w/o enclosures)